

CHAPTER 11

OTHER FINANCIAL MANAGEMENT TOPICS

Purchasing

It does not follow that the money which will be expended pursuant to the certified budget is the same identical money that was raised by the tax levied on the basis of that budget. In other words it is legal to issue purchase orders during one fiscal year and pay for the same during the following fiscal year (OAG #65-12-3).

The credit of the state shall not, in any manner, be given or loaned to, or in aid of, any individual, association, or corporation; and the state shall never assume, or become responsible for, the debts or liabilities of any individual, association, or corporation, unless incurred in time of war for the benefit of the state (Constitution of the State of Iowa, Article VII, Section 1).

All books and other school supplies shall be paid for out of the general fund (301.4).

The board of directors of a public school corporation may enter into exclusive contract with vendors for the purchase of products sold on school premises or at school functions. Vendor contracts for non-educational goods are proprietary in nature and may extend beyond the term of current board members. A marketing firm may be employed to assist with the negotiation and oversight of vendor contracts. While statutory public bidding requirements are not applicable to school district contracts for the purchase of goods and services, public policy supports use of competitive bidding procedures for such contracts (OAG #00-2-4(L)).

Public notice in regard to competitive bidding assumes three elements: first, there should be an offering, or notice, extended to the public; second, an opportunity for competition; and third, a basis for an exact comparison of bids (OAG #80-9-4).

The school district shall adopt a policy for purchasing goods or services from private enterprises which requires consideration of purchasing these goods or services from a locally owned business located within the school district which offers these goods and services if the cost and other considerations are relatively equal. Nothing in this section shall be construed to prevent or prohibit the giving of a preference to businesses owned or operated by minorities or females as may be provided in any other provision of law (23A.3).

Every school district and every person acting as contracting or purchasing agent for any such governing body shall use only those products and provisions grown and coal produced within the state of Iowa, when they are found in marketable quantities in the state and are of a quality reasonably suited to the purpose intended, and can be secured without additional cost over foreign products or products of other states. This section shall apply to horticultural products grown in this state even if the products are not in the stage of processing that the agency usually purchases the product. However, this section does not apply to a school district purchasing food while the school district is participating in the federal school lunch program (73.1).

An officer or person who is connected with, or is a member or officer of, the board of a school district who fails to give preference as required in chapter 73 is guilty of a simple misdemeanor. Each separate case of failure to give preference is a separate offense (73.5).

It shall be unlawful for any school district to purchase or use any coal, except that mined or produced within the state by producers who are, at the time such coal is purchased and produced, complying with all the workers' compensation and mining laws of the state. The provisions of this section shall not be applicable if coal produced within the state cannot be procured of a quantity or quality reasonably suited to the needs of such purchaser, nor if the equipment now installed is not reasonably adapted to the use of coal produced within the state, nor if the use of coal produced within the state would materially lessen the efficiency or increase the cost of operating such purchaser's heating or power plant, not to mines employing miners not now under the provisions of the workers' compensation Act or who permit the minors to work in individual units in their own rooms (73.6).

If it is determined by the attorney general that any provision of chapter 73 on preferences would cause denial of funds or services from the United States government which would otherwise be available, or would otherwise be inconsistent with requirements of federal law, such provision shall be suspended, but only to the extent necessary to prevent denial of such funds or services or to eliminate the inconsistency with federal requirements (73.11).

All requests hereafter made for bids and proposals for materials, products, supplies, provisions and other needed articles to be purchased at public expense, shall be made in general terms and by general specifications and not by brand name, trade name or other individual mark. All such requests and bids shall contain therein a paragraph in easily legible print, reading as follows: "By virtue of statutory authority, a preference will be given to products and provisions grown and coal produced within the state of Iowa" (73.2).

Notwithstanding any provision of law or rule relating to competitive bidding procedures, every agency, department, commission, board, committee, officer or other governing body of the state shall purchase goods and services supplied by small businesses and targeted small businesses in Iowa. In addition to the other provisions of this section relating to procurement contracts for targeted small businesses, all purchasing authorities shall assure that a proportionate share of small businesses and targeted small businesses identified under the uniform small business vendor application program of the department of economic development are given the opportunity to bid on all solicitations issued by agencies and departments of state government (73.16(1)).

A school district shall establish a procurement goal from certified targeted small businesses of at least ten percent of the value of anticipated procurements of goods and services including construction, but not including utility services, each fiscal year. Of the total value of anticipated procurements of goods and services, an additional goal shall be established to procure at least forty percent from minority-owned businesses, and forty percent from female-owned businesses (73.16(2)).

A school district shall, on an annual basis, review the school district's anticipated purchasing requirements. A school district shall notify the department of education which shall report to the department of economic development, of their anticipated purchases and recommended procurements with unit quantities and total costs for procurement contracts designated to satisfy the targeted small business procurement goal not later than August 15 annually (73.17).

The superintendent of each school district releasing a solicitation for bids or request for proposal under the targeted small business procurement goal program shall consult a directory of certified targeted small businesses produced by the department of economic development that lists all certified targeted small business by category of goods or services provided prior to or upon release of the solicitation and shall send a copy of the request for proposal or solicitation to any appropriate targeted small business listed in the directory. The department of economic development may charge the school district a reasonable fee to cover the cost of producing, distributing, and updating the directory (73.18).

In awarding a contract under the targeted small business procurement goal program, a school district having purchasing authority may use either a negotiated price or bid contract procedure. A school district using a negotiated contract shall consider any targeted small business engaged in that business (73.19).

Before announcing a contract award pursuant to the targeted small business procurement goal program, the purchasing authority shall evaluate whether the targeted small business scheduled to receive the award is able to perform the contract. This determination shall include consideration of production and financial capacity and technical competence. If the purchasing authority determines that the targeted small business may be unable to perform, the director of the department of economic development shall be notified and shall assist the targeted small business (73.20).

All laws and rules pertaining to solicitations, bid evaluations, contract awards, and other procurement matters apply to procurement contracts for targeted small businesses to the extent there is no conflict. If there is a conflict with other laws or rules, then targeted small business procurement program laws govern (73.21).

The Department of Management may impose appropriate sanctions on an AEA or school district in order to ensure compliance with state programs emphasizing equal opportunity through affirmative action, contract compliance policies, and requirements for procurement goals for targeted small businesses (19B.8).

School districts shall not, unless specifically authorized by statute, rule, ordinance, or regulation:

- a. Engage in the manufacturing, processing, sale, offering for sale, rental, leasing, delivery, dispensing, distributing, or advertising of goods or services to the public which are also offered by private enterprise unless such goods or services are for use or consumption exclusively by the school district.
- b. Offer or provide goods or services to the public for or through another political subdivision, by intergovernmental agreement or otherwise, in violation of chapter 23A on noncompetition by government (23A.2(1)).

A school corporation may, by rule, provide for exemption from the application of chapter 23A for the following activities:

- a. Goods and services that are directly and reasonably related to the educational mission of a school.

- b. Goods and services offered only to students, employees, or guests of the school and which cannot be provided by private enterprise at the same or lower cost.
- c. Use of vehicles owned by the school for charter trips offered to the public, full or part-time, or temporary students.
- d. Durable medical equipment or devices sold or leased for use off premises of the school.
- e. Goods or services which are not otherwise available in the quantity or quality required by the school.
- f. Telecommunications other than radio or television stations.
- g. Sponsoring or providing facilities for fitness and recreation.
- h. Food service and sales.
- i. Sale of books, records, tapes, software, educational equipment, and supplies (23A.2(2)).

Chapter 23A does not apply to any of the following on-campus activities of a school corporation:

- 1. Residence halls.
- 2. Student transportation except as specifically listed in subsection 2(c).
- 3. Overnight accommodations for participants in programs of the school, visitors to the school, parents, and alumni.
- 4. Sponsoring or providing facilities for cultural and athletic events.
- 5. Items displaying the emblem, mascot, or logo of the school, or that otherwise promote the identity of the school and its programs.
- 6. Souvenirs and programs relating to events sponsored by the school.
- 7. Radio and television stations.
- 9. Goods, products, or professional services which are produced, created, or sold incidental to the schools' teaching, research, and extension missions (23A.2(10)(k)).

The state director of the department of corrections shall cause to be prepared from time to time classified and itemized price lists of the products manufactured by Iowa state industries. Such lists shall be furnished to all boards of directors of school corporations and officials empowered to purchase supplies and equipment for public purposes (904.807).

The board shall take advantage of all tax exemptions on fuel, equipment, and of such other economies as are available (285.11(5)).

The board may permit commercial photographers to photograph students on school property (OAG 79-4-32).

Conflict of Interest

Any officer or employee of the state or of any subdivision thereof who is directly or indirectly interested in any contract to furnish anything of value to the state or any subdivision thereof where such interest is prohibited by statute commits a serious misdemeanor. This section shall not apply to any contract awarded as a result of open, public and competitive bidding (721.11).

It shall be unlawful for any school director, officer, AEA director or teacher to act as agent for any school textbooks or school supplies during such term of office or employment, and any school director, officer, AEA director or teacher, who shall act as agent or dealer in school textbooks or school supplies, during the term of such office or employment, shall be deemed guilty of a serious misdemeanor (301.28).

While Iowa Code section 279.7A does not preclude an agent for school textbooks or supplies from serving as a member of a school board of directors, Code section 301.28 does create such a prohibition. Pursuant to Code section 301.28, a school textbook or school supply salesperson is prohibited from serving as a school board member regardless of whether the salesperson sells books or supplies to the district upon whose board he or she serves (OAG #92-2-4(L)).

A member of the board of directors of a school corporation shall not have an interest, direct or indirect, in a contract for the purchase of goods, including materials and profits, and the performance of services for the director's school corporation. A contract entered into in violation of this section is void. This section does not apply to contracts for the purchase of goods or services which benefit a director, or to compensation for part-time or temporary employment which benefits a director, if the benefit to the director does not exceed two thousand five hundred dollars (\$2,500) in a fiscal year, and contracts made by a school board, upon competitive bid in writing, publicly invited and opened (279.7A).

Section 279.7A applies to situations where the director may only have an ownership interest in a corporation contracting with the board and to placement of a newspaper advertisement in return for consideration such as a fee or charge even if advertisements are only done on an as-needed basis (OAG #97-7-2(L)).

It is not prohibited or a conflict of interest for a school board member to vote on a contract, let after public notice and competitive bidding, on which the member has submitted a subcontract bid. However, the member would be well advised to abstain from voting in such circumstances in order to avoid the appearance of impropriety (OAG #85-2-6(L)).

Advertising specialty and novelty items which are not used for instructional purposes are not school supplies to which section 301.28 is applicable (OAG #90-7-2(L)).

Commercial salespersons of musical instruments may, in the discretion of the local school board, be permitted access to school facilities for the purpose of displaying and disseminating information regarding sale or rental of musical instruments. The local school board may not, however, select a certain store or salesperson and deny access to others. A public school music instructor may recommend a particular instrument to a student, so long as the recommendation is based on a personal or professional preference and the instructor is not acting as an agent for the seller of the instrument (OAG #80-2-2).

Use of Credit Cards

The board of directors of the AEA is authorized to issue school credit cards allowing AEA employees to pay for the actual and necessary expenses incurred in the performance of work-related duties (273.3(18)).

While payment for some travel expenses including transportation tickets and hotel accommodations could be arranged by direct billing to the school corporation by the vendor, payment for other travel expenses including gasoline is not commonly and may not feasibly be arranged by direct billing. Although travel advances are not allowable because of the audit and allowance provisions of law, the use of credit cards differs from the use of advance payments in that payment is not actually made until after the expenses are incurred. Thus verification of the expense can be made prior to payment by the governmental employer of a credit card billing. If the employer does not allow the expenses, the employer could recover expenses charged to the employer by the official or employee who made the trip (OAG # 83-7-3(L)).

Advances

Expenditures must be actually incurred rather than merely reasonably anticipated. In other words, an employer may only reimburse its employee the authorized expenses for which the employee has become liable and is thereby precluded (prohibited) from making advance payments to such employees for obligations which have not yet occurred. This does not prohibit purchase of airline tickets or chartering buses or the payment of advance registration fees for conferences paid on behalf of employees authorized to travel on school business (OAG #78-12-11).

Public Purpose

It is unlawful to use public funds to pay for social functions, parties, or other forms of entertainment for employees. This constitutes a use of property owned by the State or a governmental subdivision thereof for a private purpose. This does not apply to conferences in which employees participate in activities related to their duties and are authorized by the superiors and in which entertainment may be an incidental part of the registration fee or other expense of attending. Nor does it apply to the legitimate entertainment or meal expenses of outside consultants which may include the expenses of one or more employees participating therein (OAG #75-3-12).

A retirement dinner, however, under appropriate circumstances and with proper motives could be considered to have public purpose. It is the motive for the expenditure that may insulate an officer from criminal liability for misuse of public funds. Any retirement dinner will certainly be subject to a deserved close scrutiny and one is well advised to consider carefully the expenditure of public moneys for such a purpose (OAG #79-4-26). This opinion was based on court cases including *Kingman v. Brockton*, 153 Mass. 255, 26 N.E. 98 (1981) which recognized that a public purpose is served and public funds may be spent in commemorating those important historical, military and civil events in which all citizens should take an interest. Also considered was *John R. Grubb v. Iowa Housing Finance Authority*, 255 N.W. 2d 89, 93 (1977), which said that an examination of *Dickinson* [*Dickinson v. Porter*, 240 Iowa 393, 35 N.W. 2d 66 (1948)] and decisions from other jurisdictions discloses a judicial intent to permit the concept of public purpose to have the flexibility and expansive scope required to meet the challenges of increasingly complex social, economic, and technological conditions.

Public employees may use vehicles and computers owned by their governmental subdivision of which they are employees for private purposes if facts and circumstances indicate that the use also serves some public purpose (OAG #95-5-1).

Fund Raisers

Internal Revenue Service holds organizations responsible for informing the public what portion of purchases, admissions, etc. are tax deductible as charitable donations (or that they are not). The ruling states the importance of determining, in advance of solicitation, the portion of payments attributable to the purchase of admission or other privilege and the portion solicited as a gift. The ruling says that in those cases in which a fund-raising activity is designed to solicit payments intended to be in part a gift and in part the purchase price of admission or other participation in an event, separate amounts should be stated in the solicitation and clearly indicated on any ticket or other evidence of payment furnished to the contributor. For more information, request Publication 1391 from the IRS and/or consult with a CPA, public accountant, or enrolled agent who actively practices in the area of individual income tax preparation.

Use of Rubber Stamps

A signature on certification of claims may be affixed by stamp or other mechanical means as long as the instrument used is in the general possession and control of the one whose signature it bears, is applied by that person or designee, and is intended by that person to constitute a signature (OAG #46-1-21).

Where an administrative officer is required by law to affix a signature to various documents, the method of signing is left entirely to that officer. It may be by stamp, copperplate or otherwise. It is still the administrative officer's act. The responsible official might require of a designee using a mechanical signature device to add the designee's own signature, initials, or even an identifying number for administrative identification purposes if the official so chooses. The signature of the administrative officer is merely directory to the officers who are to act afterwards--the secretary who is to countersign, the register who is to record, and the treasurer who is to pay (OAG #53-9-16).

Statutory Authority Assigned to State Agencies

Certified Budgeting	Department of Education, SBRC
Accounting	Department of Education
Auditing	Office of the State Auditor
Interpretation of Law	Department of Education, Attorney General

Duties of the Director of the Department of Education

The department of education is established to act in a policymaking and advisory capacity and to exercise general supervision over the state system of education including all of the following:

- Public elementary and secondary schools.
- Community colleges.
- Area education agencies.
- Vocational rehabilitation.
- Educational supervision over the elementary and secondary schools under the control of an administrator of a division of the department of human services.
- Nonpublic schools to the extent necessary for compliance with Iowa school laws (256.1(1)).

Approve, coordinate, and supervise the use of electronic data processing by school districts, AEAs, and merged areas (256.9(11)).

Interpret the school laws and rules relating to the school laws (256.9(16)).

Prepare forms and procedures as necessary to be used by AEA boards, district boards, school officials, principals, teachers, and other employees, and to insure uniformity, accuracy, and efficiency in keeping records in both pupil and cost accounting, the execution of contracts, and the submission of reports, and notify the AEA board, district board or school authorities when a report has not been filed in the manner or on the dates prescribed by law or by rule that the school will not be accredited until the report has been properly filed (256.9(18)).

The DE is authorized to prescribe a uniform system of accounting. This system is the Uniform Financial Accounting manual (OAG #83-12-1(L)).

Determine by inspection, supervision, or otherwise, the condition, needs, and progress of the schools under the supervision of the department, make recommendations to the proper authorities for the correction of deficiencies and

the educational and physical improvement of the schools, and request a state audit of the accounts of a school district, school official, or school employee handling school funds when it is apparent that an audit should be made (256.9(19)).

Accept and administer federal funds apportioned to the state for educational and rehabilitation purposes and accept surplus commodities for distribution when made available by a governmental agency. The director may also accept grants and gifts on behalf of the department (256.9(7)).

Cooperate with other governmental agencies and political subdivisions in the development of rules and enforcement of laws relating to education (256.9(8)).

Conduct research on education matters (256.9(9)).

Duties of the School Budget Review Committee

The school budget review committee may recommend the revision of any rules, regulations, directive, or forms relating to school district budgeting and accounting, confer with local school boards or their representatives and make recommendations relating to any budgeting or accounting matters, and direct the director of the department of education or the director of the department of management to make studies and investigations of school costs in any school district (257.31(1)).

The committee shall adopt recommendations relating to the implementation by school districts and AEAs of procedures pertaining to the preparation of financial reports in conformity with generally accepted accounting principles (GAAP) and submit those recommendations to the state board of education (257.31(4)).

The committee shall meet and hold hearings each year to review unusual circumstances of AEAs, either upon the committee's motion or upon the request of an AEA (257.32).

Duties of the State Board of Education

Adopt rules under chapter 17A for carrying out the responsibilities of the department (256.7(5)).

The state board shall consider the recommendations of the SBRC and adopt rules specifying procedures and requiring the school districts and AEAs to conform to generally accepted accounting principles (GAAP) commencing with the school year beginning July 1, 1996 (257.31(4)).

The state board shall review the proposed budget of each AEA and either grant approval or return the budget without approval with comments. An unapproved budget shall be resubmitted to the state board for final approval (273.3(12)).

Duties of the Office of the Auditor of State

Each school officer shall install and use in the office a system of uniform blanks and forms as prescribed by law (see duties of the director of the department of education and the department of management above). State auditors shall assist the school officers in installing the system (11.23).

The auditor of state shall provide advice and counsel to public entities and certified public accountants concerning audit and examination matters (11.6(8)).

The auditor of state may audit school districts:

- If contracted by the school district for the annual audit.
- If requested by the director of the department of education (256.9(19)).
- If the auditor of state has probable cause to believe such action is necessary in the public interest because of a material deficiency in a previous audit (11.6(4)(a)).
- If the auditor of state receives from an elected official or employee of the school district a written request (11.6(4)(b)).
- If the auditor of state receives a petition signed by at least fifty eligible electors of school district (11.6(4)(c)).

Authority of Law, Rules, Opinions and Departmental Regulations

Law

Iowa school districts and AEAs operate under Dillon's Rule, by state constitution, which states that school districts and AEAs possess and can exercise the following powers and no others: Those granted in express words, those necessarily implied or necessarily incident to the powers expressly granted, and those absolutely essential to the declared objects and purposes of the school corporation--not simply convenient or desired, but indispensable. Interpretation of school law may be done by the Iowa Attorney General's Office and the Iowa Department of Education. These Opinions and Rules, once given, have the effect of law on school districts and AEAs.

It is well established that where the language of a statute is plain and unambiguous and its meaning clear and unmistakable, there is no room for construction, and we may not search for its meaning beyond the statute itself (OAG #84-5-1(L)).

Rules

An administrative rule, violation of which is a crime, may incorporate federal standards by reference, provided these standards are explicit and readily ascertainable (OAG #87-10-2(L)).

Opinions of the Attorney General

An attorney general's opinion establishes the substantive interpretation of a Code section until it is overruled, revised, withdrawn upon consideration or upset by court decision (OAG #87-1-5).

A footnote in OAG #92-11-3 indicates that an opinion based on a Code section which is repealed but replaced with a section having much the same language would continue to apply.

Various Finance Related Compliance Issues

Iowa Gaming

The Division of Racing and Gaming is charged with licensing and the auditing of the gambling reports. All licenses must be prominently display at the playing area of the game or at the drawing area of a raffle. No person or group can use another's gambling license to conduct gambling activities. However, if a public school district holds a valid gambling license, any school group or parent support group from that district may use the gambling license of the public school district to conduct games. No organization can use the district's license more than twice in a calendar year. Groups such as PTA and booster clubs, made up of parents and students may obtain their own gambling license to conduct gambling events if they do not wish to use the district's license. Only one qualified organization can hold a two year license to conduct bingo at the same location.

Gross receipts from gambling are subject to Iowa sales tax. The word "donation" printed on a gambling ticket does not exempt it from sales tax. All licensees must make arrangements with the department of revenue to obtain a sales tax permit. The sales tax permit must be displayed at the gambling location.

When applying for the gambling license, public school districts need not obtain the written credit reference, IRS documentation nor law enforcement notifications. No public [tax] funds can be used to purchase the license.

All gambling activities conducted must be fair, honest, and the object of the game must be attainable. Federal postal regulations prohibit using the mails to distribute printed matter that advertises most forms of gambling.

Iowa Sales and Use Taxes

Collection of tax on sales

Sales from educational activities are exempt from sales and use taxes if the entire proceeds are expended for educational purpose. The gross receipts from games of skill, games of chance, raffles, and bingo do not qualify for the exemption. There is no exemption number or exemption permit for sales tax purposes by the State of Iowa.

Sales tax exemption on purchases

There are hereby specifically exempted from the provisions of the retail sales tax the following: The gross receipts from services rendered, furnished, or performed and of all sales of goods, wares, or merchandise used for public purposes to a tax-certifying or tax-levying body of the state or a governmental subdivision of the state (422.45(5)).

